

AMENDED IN SENATE MAY 6, 2009
AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 726

Introduced by Senator Ashburn

February 27, 2009

An act to amend Sections 2401 and 2401.1 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

SB 726, as amended, Ashburn. ~~Hospitals:—District hospitals:~~ employment of physicians and surgeons.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law establishes, until January 1, 2011, a pilot project to allow qualified district hospitals, as defined, to employ a physician and surgeon; if the hospital does not interfere with, control, or otherwise direct the professional judgment of the physician and surgeon *certain conditions are satisfied. Existing law defines a qualified district hospital as a district hospital that provides a certain percentage of care to Medicare, Medi-Cal, and uninsured patients, that is located in a county with a certain population, and that has net losses from operations in a specified fiscal year.* The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to certain requirements. The pilot project requires that the term of a contract with a licensee not exceed 4 years. Existing law requires the Medical Board of California to report to the Legislature not later than October 1, 2008, on the effectiveness of the pilot project.

This bill would revise the pilot project to authorize the direct employment by ~~general acute care~~ *qualified district* hospitals ~~meeting specified requirements~~ of an unlimited number of physicians and surgeons under the pilot project, and would authorize such a hospital to employ ~~more than 2 up to 5~~ licensees at a time ~~in certain circumstances if certain requirements are met~~. *The bill would revise the definition of a qualified district hospital to a hospital that, among other things, is operated by the district itself and is either a small and rural hospital, as defined, or is located within a medically underserved area, as specified. The bill would further revise the pilot project to authorize a qualified district hospital to directly employ a physician and surgeon specializing in family practice, internal medicine, general surgery, or obstetrics and gynecology, and would authorize the hospital to request permission from the board to employ a physician and surgeon specializing in a different field if certain requirements are met.* The bill would require that the term of a contract with a licensee not exceed 10 years. The bill would extend the pilot project until January 1, 2018. The bill would require the board to provide a preliminary report to the Legislature not later than July 1, 2013, and a final report not later than July 1, 2016, evaluating the effectiveness of the pilot project, and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature hereby finds and declares that a~~
2 ~~2001 University of California, San Francisco, study found that the~~
3 ~~Inland Empires, Central Valley/Sierra Nevada, and South~~
4 ~~Valley/Sierra Nevada regions have at least 30 percent fewer~~
5 ~~physicians and surgeons than the Los Angeles and San Francisco~~
6 ~~Bay area regions.~~
7 ~~SEC. 2.~~
8 ~~SECTION 1.~~ Section 2401 of the Business and Professions
9 Code is amended to read:
10 2401. (a) Notwithstanding Section 2400, a clinic operated
11 primarily for the purpose of medical education by a public or
12 private nonprofit university medical school, which is approved by
13 the Division of Licensing or the Osteopathic Medical Board of
14 California, may charge for professional services rendered to

1 teaching patients by licensees who hold academic appointments
2 on the faculty of the university, if the charges are approved by the
3 physician and surgeon in whose name the charges are made.

4 (b) Notwithstanding Section 2400, a clinic operated under
5 subdivision (p) of Section 1206 of the Health and Safety Code
6 may employ licensees and charge for professional services rendered
7 by those licensees. However, the clinic shall not interfere with,
8 control, or otherwise direct the professional judgment of a
9 physician and surgeon in a manner prohibited by Section 2400 or
10 any other provision of law.

11 (c) Notwithstanding Section 2400, a narcotic treatment program
12 operated under Section 11876 of the Health and Safety Code and
13 regulated by the State Department of Alcohol and Drug Programs,
14 may employ licensees and charge for professional services rendered
15 by those licensees. However, the narcotic treatment program shall
16 not interfere with, control, or otherwise direct the professional
17 judgment of a physician and surgeon in a manner prohibited by
18 Section 2400 or any other provision of law.

19 (d) Notwithstanding Section 2400, a qualified hospital *owned*
20 *and operated by a health care district pursuant to Division 23*
21 *(commencing with Section 32000) of the Health and Safety Code*
22 may employ a licensee pursuant to Section 2401.1, and may charge
23 for professional services rendered by the licensee, if the physician
24 and surgeon in whose name the charges are made approves the
25 charges. However, the hospital shall not interfere with, control, or
26 otherwise direct the physician and surgeon's professional judgment
27 in a manner prohibited by Section 2400 or any other provision of
28 law.

29 ~~SEC. 3.~~

30 *SEC. 2.* Section 2401.1 of the Business and Professions Code
31 is amended to read:

32 2401.1. (a) The Legislature finds and declares as follows:

33 (1) Due to the large number of uninsured and underinsured
34 Californians, a number of California communities are having great
35 difficulty recruiting and retaining physicians and surgeons.

36 (2) In order to recruit physicians and surgeons to provide
37 medically necessary services in *rural and* medically underserved
38 communities, many *district* hospitals have no viable alternative
39 but to directly employ physicians and surgeons in order to provide

1 economic security adequate for a physician and surgeon to relocate
2 and reside in their communities.

3 (3) The Legislature intends that a *district* hospital meeting the
4 conditions set forth in this section be able to employ physicians
5 and surgeons directly, and to charge for their professional services.

6 (4) The Legislature reaffirms that Section 2400 provides an
7 increasingly important protection for patients and physicians and
8 surgeons from inappropriate intrusions into the practice of
9 medicine, and further intends that a *district* hospital not interfere
10 with, control, or otherwise direct a physician and surgeon's
11 professional judgment.

12 (b) A pilot project to provide for the direct employment of
13 physicians and surgeons by qualified *district* hospitals is hereby
14 established in order to improve the recruitment and retention of
15 physicians and surgeons in *rural and other* medically underserved
16 areas.

17 (c) For purposes of this section, a qualified *district* hospital
18 means a hospital that meets all of the following requirements:

19 ~~(1) Is a general acute care hospital, as defined in Section 1250~~
20 ~~of the Health and Safety Code.~~

21 *(1) Is a district hospital organized and governed pursuant to*
22 *the Local Health Care District Law (Division 23 (commencing*
23 *with Section 32000) of the Health and Safety Code).*

24 *(2) Is operated by the district itself, and not by another entity.*

25 ~~(2)~~
26 ~~(3) Is located within a medically underserved population,~~
27 ~~medically underserved area, or health professions shortage area,~~
28 ~~population or medically underserved area, so designated by the~~
29 ~~federal government pursuant to Section 254b, 254e-14, or 254e~~
30 ~~254b or 254c-14 of Title 42 of the United States Code, or is a small~~
31 ~~and rural hospital as defined in Section 124840 of the Health and~~
32 ~~Safety Code.~~

33 ~~(3)~~
34 (4) (A) The chief executive officer of the hospital has provided
35 certification to the board ~~that it and the medical staff that the~~
36 *hospital has been unsuccessful, using commercially reasonable*
37 *efforts, in recruiting a core physician and surgeon for at least 12*
38 *consecutive months during the period beginning on July 1, 2008,*
39 *and ending on July 1, 2009. This certification shall specify the*
40 *commercially reasonable efforts, including, but not limited to,*

1 *recruitment payments or other incentives, used to recruit a core*
2 *physician and surgeon that were unsuccessful and shall specify*
3 *the reason for the lack of success, if known.*

4 (B) For purposes of this paragraph, “~~core physician~~” *physician*
5 *and surgeon*” means a physician and surgeon specializing in family
6 practice, internal medicine, general surgery, ~~orthopedic surgery,~~
7 or obstetrics and gynecology.

8 (C) *Notwithstanding subparagraph (A), a hospital may request*
9 *permission from the board to hire a physician and surgeon in a*
10 *specialized field other than the fields listed in subparagraph (B)*
11 *if all of the following requirements are met:*

12 (i) *The hospital can demonstrate a pervasive inability to meet*
13 *the needs of the health care district in that specialized field.*

14 (ii) *The chief medical officer of the hospital provides the*
15 *certification described in subparagraph (A) regarding the*
16 *hospital’s efforts to recruit a physician and surgeon in the*
17 *specialized field during the period of time specified in*
18 *subparagraph (A).*

19 (iii) *The other applicable requirements of this subdivision are*
20 *satisfied.*

21 ~~(4) The~~

22 (5) *Except as provided in subparagraph (B) of paragraph (7),*
23 *the medical staff and the elected trustees of the hospital concur by*
24 *an affirmative vote of each body that the physician and surgeon’s*
25 *employment is in the best interest of the communities served by*
26 *the hospital.*

27 ~~(5)~~

28 (6) *The hospital enters into or renews a written employment*
29 *contract with the physician and surgeon prior to December 31,*
30 *2017, for a term not in excess of 10 years. The contract shall*
31 *provide for mandatory dispute resolution under the auspices of the*
32 *board for disputes directly relating to the licensee’s clinical*
33 *practice.*

34 ~~(6)~~

35 (7) (A) *Except as provided in subparagraph (B), the total*
36 *number of licensees employed by the hospital does not exceed two*
37 *at any time.*

38 (B) *The board shall authorize the hospital to hire—additional*
39 *licensees if the medical staff and elected trustees concur by an*
40 *affirmative vote taken pursuant to paragraph (4). no more than*

1 *three additional licensees if both of the following requirements*
2 *are met:*

3 *(i) The hospital makes a showing of clear need in the community*
4 *following a public hearing duly noticed to all interested parties,*
5 *including, but not limited to, those involved in the delivery of*
6 *medical care.*

7 *(ii) The medical staff concurs by an affirmative vote that*
8 *employment of the additional licensee or licensees is in the best*
9 *interest of the communities served by the hospital.*

10 ~~(7)~~

11 (8) The hospital notifies the board in writing that the hospital
12 plans to enter into a written contract with the licensee, and the
13 board has confirmed that the licensee's employment is within the
14 maximum number permitted by this section. The board shall
15 provide written confirmation to the hospital within five working
16 days of receipt of the written notification to the board.

17 (d) The board shall provide a preliminary report to the
18 Legislature not later than July 1, 2013, and a final report not later
19 than July 1, 2016, evaluating the effectiveness of the pilot project
20 in improving access to health care in *rural and* medically
21 underserved areas and the project's impact on consumer protection
22 as it relates to intrusions into the practice of medicine.

23 (e) Nothing in this section shall exempt the *district* hospital
24 from any reporting requirements or affect the board's authority to
25 take action against a physician and surgeon's license.

26 (f) This section shall remain in effect only until January 1, 2018,
27 and as of that date is repealed, unless a later enacted statute that
28 is enacted before January 1, 2018, deletes or extends that date.